IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

MFA.No. 400 of 2001

O.P(MV).NO.37/1998 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA.
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APPELLANT/ PETITIONER:

THOMAS, @ SAJU, S/O. PHILIP @ JOY, AGED 23 YEARS,
RESIDING AT PUTHENPURAYIL VEEDU, PEZHAKKAPILLY,
MULAVOOR VILLAGE, MUVATTUPUZHA.

BY ADV. SRI.K.JAJU BABU,
ADV. SRI.M.V.BIPIN.

RESPONDENTS/ RESPONDENTS:
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1. **K.K. BASHEER, CHATTAYIL VEEDU,**
KAVUMKARA, MUVATTUPUZHA.

2. **NASSAR, S/O. SAITHU, MANICKEL PUTHENPURA VEEDU,**
PUNNAMATTAM KARA, ENANALLOOR VILLAGE, MUVATTUPUZHA.

3. **THE NEW INDIA ASSURANCE CO. LTD., MUVATTUPUZHA.**

BY ADV. SRI.K.B.SURESH (AMICUS CURIAE),
SRI.PAUL MATHEW (PERUMPILLIL),
SRI.JOBY JACOB PULICKEKUDY,
SRI.ANIL GEORGE,
SRI.THOMAS MATHEW NELLIMOOTTIL.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No. 400 of 2001

Dated this the 31st day of October, 2007

Judgment

Koshy, J.

Appellant/Claimant met with an accident by which he sustained the following injuries:

"1. Segmental fracture right fibula;
2. Fracture 2, 3, 4 metatarsals right foot;
3. Lacerated wound middle third right leg 2."

Medical certificate shows that fracture was completely united. He was aged only 23 years. No disability certificate was produced. But, according to the appellant, he has to undergo psychiatric treatment following the accident. The tribunal correctly found that there is no evidence to show that it is not the result of the accident. The tribunal has not granted compensation for permanent disability and loss of earning capacity, but, for loss of amenities and discomfort Rs.10,000/- was granted. We see no ground for interference.

2. Appellant was a rubber tapper by profession. He claimed that his monthly income was Rs.3,500/-. The tribunal found that because of the fracture, he might not have gone for work at all for six months. The tribunal has taken Rs.1,500/- as the monthly income. A rubber tapper will get at least Rs.100/- per day even considering the minimum wages applicable to rubber tappers during the year 1997. He will get at least 25 days' work. Rs.2,500/- can be taken as the monthly income. Therefore, for loss of actual wages, he will get Rs.6,000/- more for the treatment period of six months. We see no ground to enhance the compensation under any other heads.

3. The tribunal also found that there is 40% contributory negligence on the part of the claimant. If 40% is deducted, additional compensation payable will be 60% of the same. So, appellant will get Rs.3,600/= as additional compensation over and above the compensation awarded by the tribunal. The above Rs.3,600/- should be deposited by the third respondent insurance company with 8% interest from the date of application till its

deposit. On deposit of the amount, appellant is allowed to withdraw the same.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A.NO. 400 OF 2001

Judgment

Dated:31st October, 2007